IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8472 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAISUKHLAL KALIDAS JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI for Petitioner

MR AD OZA, GP, for Respondent No. 1

MR ASHWIN H ACHARYA for Respondent No. 2, 3

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 17/11/2000

ORAL JUDGEMENT

The short question which needs to be considered and adjudicated upon in this petition under Article 226 of the Constitution of India is revolving round as to whether the petitioner, in the facts and circumstances, is entitled to pension or not.

A resume of material and relevant facts may be highlighted to appreciate the aforesaid question posed before this Court. The petitioner joined the services of the erstwhile Government of Saurashtra State on 1st November, 1949 as Welfare organiser. Upon reorganisation of erstwhile State of Saurashtra, it came to be part of erstwhile State of Bombay and, therefore, the services of the petitioner were allotted to that Government and again on bifurcation of bilingual erstwhile State of Bombay, into Maharashtra and Gujarat, the petitioner was allotted to the State of Gujarat. He was, therefore, in the Government service on the post of Welfare Organizer till 31st March, 1964.

The petitioner has, inter alia, contended that the Government of Gujarat constituted Gujarat Labour Welfare Board (GLW Board) and the services of the petitioner came to be transferred to the said GLW Board by office order dated 26th March, 1964, with effect from 1st April, 1964.

Subsequently, the Department of Education and Labour, Government of Gujarat, by resolution dated 15th January, 1964, constituted 20 Labour Welfare Centres under the Gujarat Labour Welfare Board. As a resultant effect, the members of the staff attached to such centres, came to be transferred to the Board, which is very evident from the resolution of the Government dated 15th January, 1964. The petitioner was working in such a centre at Jamnagar and he was transferred to the Board by virtue of the aforesaid resolution of the Government dated 15th January, 1964. It is also pleaded by the petitioner that his services were transferred by the respondent No.1, State of Gujarat, to the respondent No.2, Gujarat Labour Welfare Board, but the name of the petitioner in Government was continued and the petitioner continued to be remained as an employee of the respondent No.1. The services of the petitioner, as further alleged by the petitioner, were never terminated by the respondent No.1, State, and that he was merely transferred to the respondent No.2 Board. It is, in this context, contended that the petitioner has remained as Government servant and is entitled to all the benefits including the pensionary benefits, which are available to the Government servants.

The petitioner retired from the service on 30th November, 1985 on completion of 36 years of service. It is his contention that he being an employee of the respondent No.1, State of Gujarat, he is entitled to pension according to the Government Rules. The respondent No.1,

has refused to grant pension to the petitioner, contending that the petitioner was not a Government servant. There were host of exchange of correspondence between the petitioner and the respondents. Having failed in persuading the Government that he is a Government servant with the right to claim pension, he has knocked the doors of justice by filing this petition for pension and retiral benefits.

Learned advocate Mr Nanavati for the petitioner and the learned Government Pleader, Mr Oza, for the Government also offered their submissions. They have also taken this Court through the record and the relevant resolutions. Mr.Nanavati has also placed reliance on a decision of the Hon'ble Supreme Court in S.I.Rupala v. Lt.Governor, Through Chief Secretary, AIR 2000 SC 594.

On behalf of the respondents, respondent No.3, Welfare Commissioner, Mr. R.C.Patel, has filed counter questioning the claim of pension made in the petition, inter alia, stating that the petitioner was no longer in the employment of the Government and pursuant to the resolution dated 15th January, 1964, the amount due and payable to the petitioner and such other persons on their transfer to the Gujarat Labour Welfare Board, has already been paid and the benefits arising out of the said resolution and other resolutions were also availed of by the petitioner.

There is no dispute about the fact that the petitioner's services were transferred to the GLW Board with effect from 1.4.64, pursuant to the resolution of the Government. Prior to that, the petitioner was serving under respondent No.1, State of Gujarat. Thereafter, the petitioner's services came to be transferred to the respondent No.2, Board by resolution dated 15.1.64. There is no dispute this aspect. A copy of the resolution is also placed on record along with the counter affidavit.

After having dispassionately examined the contents and the tenor of the said resolution, it is evident that persons like the petitioner, who came to be transferred to the respondent No.2 Board, by resolution from the service umbrella of the respondent No.1, State of Gujarat, were entitled to special benefits in connection with pensionary rights. The petitioner has, undisputedly, availed the said benefit long before and he has never made any grievance in that behalf till the date of his retirement.

Under the Government resolution, Education and Labour Department, dated 15th January, 1964, the State Government has directed that the Labour Welfare Centres under the control of Government of Saurashtra and Kutch areas of the State should be transferred to the Gujarat Labour Welfare Board (respondent No.2) with effect from the date that may be decided by the Commissioner of Lobour, Ahmedabad. Thereafter, pursuant to the provisions of section 13(2) of the Bombay Labour Welfare Fund Act, 1953 and in consultation with the Gujarat Labour Welfare Board, the Government of Gujarat directed that the staff employed in the Centres under the control of the Commissioner of Labour should also be transferred to the Board, with effect from the date of transfer of the Centres to the Board along with centres and the service conditions of such persons, after their transfer, should be regulated in the manner and mode prescribed in the resolution dated 15th January, 1964.

As per one of the provisions made in the said resolution, the pensionary liabilities in respect of the permanent Government servants as were holding pensionable posts under Government should be liquidated upto the date of transfer. This should be done by crediting an amount equal to the commuted value of the pension admissible for the service rendered by such servants under the Government under Bombay Civil Services Rules 266 and section (VIII) of Chapter XI of the Bombay Civil Services Rules Manual Valume-I.

It was also decided to take care of the pensionary liability in respect of the temporary Government servants. Again, the amount due and payable under the said resolution was directed to be credited to the contributory provident fund of the employees concerned both, temporary and permanent under the Board. It was also decided that the amount of general or contributory provident fund to the credit of the Government servants on the date of transfer, also, should be transferred to the Board. Not only that, the Government servants, both temporary and permanent were also allowed to carry forward all leave which were at their credit, at the time of transfer from Government service, like that, from respondent No.1 to respondent No.2.

It is not disputed that pursuant to the aforesaid resolution and the terms and conditions enumerated and incorporated in the resolution, the commuted value of the pension for the service of the petitioner upto 31.3.64, an amount of Rs.4350.20 and towards C.C.R.G. Rs.812.70, totalling an amount of Rs.5162.90 was credited in the

account of the petitioner and pensionary liability of the petitioner upto 31.3.64 was discharged. On a pointed question being put to the learned advocate for the petitioner, this was not disputed. The certificate issued by the Office of the Accountant General in this behalf is also placed on record.

It is, therefore, very clear that the petitioner was absorbed in the Board and from the date of transfer from respondent No.1 to respondent No.2 Board by the resolution of the Government till his retirement, he has not made any objection or complaint or grievance. For the first time, grievance came to be made in 1988, by filing this petition. It is also not the case of the petitioner that he has not availed the contributory provident fund scheme upon his transfer from respondent No.1, State of Gujarat to respondent No.2 Board. It is, therefore, explicitly evident from the record that the petitioner is not entitled to claim pension or pensionary benefits from the respondent No.1. His amount has already been paid till the date of transfer from respondent No.1, State of Gujarat to respondent No.2, Board, under the resolution of the Government without any objection and he has been paid the commuted value of the pensionary liability, thus far, created on the part of the Government of Gujarat. After having received the amount to his credit, as stated above, pursuant to the resolution of the Government dated 15th January, 1964, and having not made any grievance till the filing of the petition, even after retirement, in the opinion of this Court the petition is absolutely without any merits and deserves to be rejected with costs. Accordingly, this petition is rejected with costs. Rule discharged.

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(vjn)